

Attachment 2

Proposed Regulation Order: Airborne Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning

Deletions to the language of the regulation originally proposed on January 4, 2002 are shown in ~~strike-out~~ and additions to the language are underlined.

Proposed Regulation Order

Airborne Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning

Adopt new section 93113, title 17, California Code of Regulations, to read as follows:

93113 Airborne Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning.

(a) Applicability.

- (1) Notwithstanding section 41806(a) of the Health and Safety Code, this regulation shall apply to persons conducting outdoor burning of combustible or flammable waste generated from inside residences and from outdoor activities associated with a residence, for the purpose of disposing of the waste.
- (2) This regulation shall apply to persons lighting fires that burn combustible or flammable waste, as defined, outdoors in enclosed or partially enclosed vessels, such as incinerators or burn barrels, or in an open outdoor fire, such as in pits or in piles on the ground. This regulation shall not apply to persons lighting fires at the direction of a public officer in an emergency situation for public health or fire safety reasons, in accordance with section 41801 of the Health and Safety Code or other provisions of law.
- (3) Except as provided in (a)(1) and (a)(2) above, nothing in this regulation shall affect the applicability of the provisions of article 2 and article 3, respectively, of chapter 3 of part 4 of division 26 of the Health and Safety Code.

(b) Definitions.

Terms used shall have the same definitions as in Health and Safety Code section 39010 et. seq., unless otherwise indicated. For purposes of this regulation, the following additional definitions shall apply:

- (1) “Air Pollution Control District” (APCD), “Air Quality Management District” (AQMD), “air district,” or “district” means the Governing Board of an air pollution control district or an air quality management district created or continued in existence pursuant to Health and Safety Code section 40000 et seq.

- (2) "APCO" means the Air Pollution Control Officer or the chief executive officer of the respective local air pollution control district or local air quality management district where the property is located, or a designated representative.
- (3) "ARB" means the State of California Air Resources Board.
- (4) "Air Toxic" means toxic air contaminants as defined in section 39655 (a) of the Health and Safety Code.
- (5) "Allowable Combustibles" means dry natural vegetation waste originating on the premises and reasonably free of dirt, soil and visible surface moisture.
- ~~(6) "Approved transfer station or disposal facility" means a transfer station, landfill, or municipal waste incinerator with a valid operating permit from the solid waste authority with jurisdiction over its operation.~~
- ~~(7)(6)~~ "Approved ignition device" means an instrument or material that will ignite open fires without the production of black smoke by the ignition device, as approved by the APCO.
- ~~(8) "Available regular waste pickup service" means the availability of mandatory or voluntary regular waste collection service, through a licensed waste hauler, by virtue of the residence's location within an area franchised by the local jurisdiction with authority to delineate and to franchise geographic service areas, or through regular waste collection service provided directly by the local jurisdiction.~~
- ~~(9)(7)~~ "Burn Barrel" means a metal container used to hold combustible or flammable waste materials so that they can be ignited outdoors for the purpose of disposal.
- (8) "Census zip code" means a Zip Code® tabulation area, a statistical geographic entity that approximates the delivery area for a U.S. Postal Service five-digit Zip Code. Census zip codes are aggregations of census blocks that have the same predominate Zip Code associated with the mailing addresses in the U.S. Census Bureau's Master Address File. Census zip codes do not precisely depict Zip Code delivery areas, and do not include all Zip Codes used for mail delivery. For the purposes of this regulation, census zip codes are referenced to the most recent national decennial census completed by the U.S. Census Bureau.
- (9) "Chief fire official" means the ranking officer in the authority having jurisdiction with responsibility for fire protection within a defined geographic region of an air district, or his or her designee. The chief fire

official may be a federal, state, county or municipal employee, depending on the extent of the fire jurisdiction within the exemption area. In State or Federal Responsibility Areas for wildland protection, the state or federal official's determination overrides county authority with regard to burn permits and the use of burn barrels or incinerators in exemption areas.

(10) "Combustible" means any substance capable of burning or any substance that will readily burn.

~~(11)"Communal or Community Dumpster" means a dumpster or bin at a fixed location and used by more than one household, under contract with a licensed waste hauler, for disposal of residential waste.~~

~~(12)~~(11) "Disallowed Combustibles" means any waste or manufactured material, including but not limited to petroleum products and petroleum wastes; construction and demolition debris; coated wire; putrescible wastes; tires; tar; tarpaper; non-natural wood waste; processed or treated wood and wood products; metals; motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; and fecal- and food-contaminated material. For purposes of this regulation, dry, natural vegetation waste from yard maintenance is not a disallowed combustible, if reasonably free of dirt, soil and surface moisture.

~~(13)~~(12) "Flammable" means capable of catching fire easily, or combustible.

~~(14)~~(13) "Incinerator" means any device constructed of nonflammable materials, including containers commonly known as burn barrels, for the purpose of burning therein trash, debris, and other flammable materials for volume reduction or destruction.

(14) "Incorporated place" means the city, town, municipality or village reported to the U.S. Census Bureau as being legally in existence under California law at the time of the most recent national decennial census completed by the U.S. Census Bureau. For the purposes of calculating population density for this regulation, incorporated places include the FIPS Place Class Codes C1, C7 and C8, as defined by the U.S. Census Bureau.

~~(15)"Mandatory regular waste pickup service" means regular waste collection provided to residences by a local agency or an approved waste hauler, where the local waste authority has designated a franchise or a permit,~~

~~and where each household is required to pay for and use the pickup service.~~

~~(16)~~(15) "Natural vegetation" means all plants, including but not limited to grasses, forbs, trees, shrubs, flowers, or vines that grow in the wild or under cultivation. Natural vegetation excludes vegetative materials that have been processed, treated or preserved with chemicals for subsequent human or animal use, including but not limited to chemically-treated lumber, wood products or paper products.

~~(17)~~(16) "Open outdoor fire" means the combustion of combustible material of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a flue.

~~(18)~~(17) "Permissive burn day" or "burn day" means any day on which agricultural burning, including prescribed burning, is not prohibited by the ARB and agricultural and prescribed burning is authorized by the air district consistent with the Smoke Management Guidelines for Agricultural and Prescribed Burning, set forth in sections 80100-80330 of title 17 of the California Code of Regulations.

(18) "Population density" means the number of people within a census zip code divided by the area of the census zip code after subtracting the population and area of all incorporated places within the census zip code.

(19) "Processed or treated wood and wood products" means wood that has been chemically treated to retard rot or decay or wood that has been modified with glues, laminates, stains, finishes, paints or glosses for use in furniture or for construction purposes, including but not limited to plywood, particle board, fencing or railroad ties. For the purposes of this regulation, dimensional lumber that has been air-dried or kiln-dried, with no preservatives or finishes added, is not considered processed or treated wood.

(20) "Residence" means a single- or two-family dwelling unit and the land and ancillary structures surrounding it.

(21) "Residential waste burning" means the disposal of the combustible or flammable waste from a single- or two-family dwelling unit or residence by burning outdoors. Residential waste burning is not agricultural, including prescribed, burning.

~~(22) "Voluntary regular waste pickup service" means regular waste collection offered to residences by a local agency or an approved waste hauler, where the local waste authority has designated a franchise or a permit, but~~

~~where each household has the option of not paying for and receiving the pickup service that is available.~~

~~(23)~~(22) "Waste" means all discarded putrescible and non-putrescible solid, semisolid, and liquid materials, including but not limited to petroleum products and petroleum wastes; construction and demolition debris; coated wire; tires; tar; tarpaper; wood waste; processed or treated wood and wood products; metals; motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; fecal- and food-contaminated material; felled trees; tree stumps; brush; plant cuttings and prunings; branches; garden waste; weeds; grass clippings, pine needles, leaves and other natural vegetation waste.

(c) Prohibitions.

- (1) No person shall burn disallowed combustibles from any property for the purpose of disposing of waste material outdoors at a residence, except as provided under subsection (e), "Exemptions", below.
- (2) No person shall dispose of allowable combustibles from any property by burning them in a burn barrel or incinerator outdoors, except as provided under subsection (e), "Exemptions", below.
- (3) No person shall ignite, or allow to become ignited, allowable combustibles unless using an approved ignition device.
- (4) No person shall ignite, or allow to become ignited, allowable combustibles unless it is a permissive burn day in the air district where the residential waste burning is to take place.

(d) Compliance Schedule.

- (1) For the purposes of Section 39666(d) of the Health and Safety Code, the date of adoption of this regulation shall be _____ [insert the date of filing with the Secretary of State].
- (2) Unless an air district adopts an earlier effective date ~~under~~ in accordance with section 39666(d) of the Health and Safety Code, ~~or applies for exemptions under subsection (e), below,~~ the prohibitions set forth in

subsection (c), above, shall become effective on July 1, 2003
January 1, 2004.

- (3) Beginning no later than January 1, 2003, the ARB shall conduct a public education and outreach program with respect to the regulation, ~~the~~ public health impacts of residential waste burning, and available alternatives to burning.

(e) Exemptions.

- ~~(1) The prohibitions described in subsections (c)(1) and (c)(2), above, of this regulation shall not apply to any exempted geographic area described under subsection (e)(5), below.~~
- ~~(2) Any air district seeking an exemption from subsections (c)(1) and (c)(2), above, shall file a Request for Exemption in writing to ARB before March 1, 2003. The requirements for a Request for Exemption are described in subsection (e)(4), below.~~
- ~~(3) No air district shall file a Request for Exemption to allow the burning of any disallowed combustible prohibited by air district rules in effect on January 4, 2002. An air district shall not apply for an exemption for a geographic area with a more stringent local ordinance, in effect on January 4, 2002, prohibiting the burning of a disallowed combustible, otherwise allowed by the air district.~~
- ~~(4) A Request for Exemption shall include:~~
- ~~(A) a resolution from the air district's Governing Board adopted at a public hearing approving the Request for Exemption; and~~
 - ~~(B) a map of the exempted geographic areas within their jurisdiction, which meet the criteria listed in subsection (e)(5), below, and~~
 - ~~(C) a detailed, written justification for the mapping, including a demonstration that alternatives for waste disposal, other than residential waste burning, are not likely to become available within the five-year exemption period, and~~
 - ~~(D) an analysis showing that local ordinances existing on January 4, 2002 do not prohibit the outdoor burning of the materials requested for exemption, in any part of the exempted geographic area.~~
- ~~(5) The exempted geographic areas must meet criteria including, but not limited to, all of the following:~~
- ~~(A) no mandatory or voluntary regular waste pickup service, considering reasonable cost and frequency of service; and~~
 - ~~(B) greater than a reasonable distance from an approved transfer station or disposal facility or a communal or community dumpster,~~

~~considering road miles or time travelled, road conditions, terrain, weather conditions, reasonable tipping fees, and hours of operation; and~~

~~(C) low population density per census tract or other appropriate subunit of the county area, including but not limited to zoning designation or parcel size.~~

~~(6) ARB shall review the air district's Request for Exemption and approve or disapprove the Request for Exemption, in writing, within 60 days after submittal. The approval shall state the exempted geographic areas in the air district where the prohibitions of subsections (c)(1) and (c)(2), above, apply.~~

~~(7) If the initial Request for Exemption is disapproved, the ARB shall return the Request for Exemption to the air district for amendment. The disapproval shall include reasons for the denial and the air district shall be afforded an additional 30 days from the date of denial to submit a revised Request for Exemption.~~

~~(8) Within 30 days of receipt of the revised Request for Exemption, the ARB shall approve or reject the revised Request for Exemption, and shall designate the geographic areas where the prohibitions of (c)(1) and (c)(2) do not apply.~~

~~(9) Every five years after ARB has approved an air district's Request for Exemption, the air district, with the concurrence of ARB, shall determine whether to renew the exemption for an additional five years and whether the mapped exempted geographic area(s) should be modified. In renewing the exemption or in modifying the exempted geographic area(s), the Governing Board of the air district shall make a finding at a public hearing that the exemption criteria in (e)(5) are still applicable to the renewed or modified exempted geographic area.~~

~~(10) Consultation with, and concurrence from, the ARB on the renewal and/or modification of the exempted geographic areas shall continue every five years thereafter until the exemption criteria are no longer met, at which time the exemptions shall terminate.~~

(1) No exemption from the prohibitions set forth in subsections (c)(1) and (c)(2) is available for an incorporated place in any census zip code or census zip code sub-area.

(2) Where the population density is less than or equal to 3.0 within the boundaries of any census zip code within an air district, the following exemptions apply:

(A) dry non-glossy paper and cardboard may be burned.

- (B) burn barrels or incinerators may be used.
- (3) Where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of (e)(10).
- (4) As part of any Request for Exemption submitted under subsection (e)(3), an air district may create sub-areas within a census zip code where the prohibitions set forth in subsections (c)(1) and (c)(2) shall still apply, subject to the provisions of (e)(10).
- (5) Where the population density is greater than 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to create sub-areas within a census zip code to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of subsection (e)(10), provided the sub-area has a population density of less than or equal to 3.0.
- (6) The prohibition contained in subsection (c)(2) of this regulation shall not apply in any jurisdiction where a local ordinance or other enforceable mechanism is in effect on January 4, 2002 requiring the use of a burn barrel or incinerator to burn allowable combustibles, unless the local ordinance or other enforceable mechanism is subsequently rescinded or revoked.
- (7) No air district shall file a Request for Exemption from subsection (c)(1) to allow the burning of dry non-glossy paper and cardboard if it is prohibited by air district rules in effect on January 4, 2002, ~~or thereafter~~, or within a geographic area where it is prohibited by a local ordinance or other enforceable mechanism in effect January 4, 2002, ~~or thereafter~~.
- (8) No air district shall file a Request for Exemption from subsection (c)(2) to allow the use of a burn barrel or incinerator outdoors at a residence if it is prohibited by air district rules in effect on January 4, 2002, ~~or thereafter~~, or within a geographic area where ~~the~~ use of a burn barrel or ~~incinerator~~ is prohibited by a local ordinance or other enforceable mechanism in effect January 4, 2002, ~~or thereafter~~.
- (9) On or before May 1, 2003, and every ten years thereafter, the ARB shall provide the air districts with a listing of all incorporated places and the population density within the boundaries of each census zip code contained within each air district.

- (10) Any Request for Exemption by an air district shall be submitted in writing to the ARB on or before August 1, 2003, and every ten years thereafter, and shall include all of the following:
- (A) a resolution, board order, or other enforceable mechanism adopted by the air district's Governing Board at a formal public meeting approving the Request for Exemption; and
 - (B) a written commitment from the air district to provide information on the hazards associated with residential waste burning, and ways to minimize these hazards, to all persons conducting residential waste burning by using either an air district or appropriate fire protection agency permit program for residential waste burning, or other equivalent mechanism; and
 - (C) to allow the burning of dry non-glossy paper and cardboard where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, a finding by the air district that the exemption is necessary; and
 - (D) to allow the use of burn barrels or incinerators where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, written documentation from the chief fire official with primary jurisdiction over fire safety within the area contained within the census zip code, including references to fire codes (where applicable), that an unacceptable fire risk would occur if the prohibition set forth in subsection (c)(2) for that area remained in effect; and
 - (E) for census zip code sub-areas, documentation showing the population, land area, and population density of each census zip code sub-area and providing specific, enforceable, geographic boundaries; and
 - (F) a list of the specific exemptions requested, for each applicable census zip code and census zip code sub-area, that are included in the Request for Exemption; and
 - (G) a finding that all incorporated places within the boundaries of the census zip code or census zip code sub-area within an air district are excluded from the Request for Exemption; and
 - (H) a finding that the air district considered the health risks to all populated communities that are within exempted areas; and
 - (I) a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, or thereafter, that would otherwise prohibit the burning of dry-non-glossy paper and cardboard; and
 - (J) a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, or thereafter, that would otherwise prohibit the use of a burn barrel or incinerator.

- (11) ARB shall review the air district's Request for Exemption for completeness and approve or reject the Request for Exemption, in writing, within 60 days after submittal.
- (12) If the air district's Request for Exemption is not complete, the ARB shall return the Request for Exemption to the air district for amendment. The air district shall have an additional 30 days to submit a revised Request for Exemption.
- (13) By January 1, 2004, and every ten years thereafter, the ARB shall make available a listing of all census zip codes and census zip code sub-areas within each air district that are exempt in accordance with the criteria specified in subsections (e)(2), (e)(3) and (e)(5) and as approved by the ARB.
- (14) (A) Except as provided in subsection (e)(14)(B), all exemptions shall terminate on December 31, 2013, and as appropriate every ten years thereafter, unless renewed by the air district pursuant to the procedures set forth in subsections (e)(10) through (e)(12).
(B) An exemption provided in accordance with subsection (e)(5) shall terminate on December 31, 2008, and as appropriate every five years thereafter, unless renewed by the air district pursuant to the procedures set forth in subsections (e)(10) through (e)(12).

NOTE: Authority cited: Sections 39600, 39601, 39659 and 39666, Health and Safety Code. Reference: Sections 39020, 39044, 39650 through 39669, 39701, 41700 and 41806, Health and Safety Code.